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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,114	12/15/2003	Pamela S. Greene	005127.00572	4855

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BANNER & WITCOFF, LTD.
1001 G STREET, N.W.
WASHINGTON, DC 20001-4597

EXAMINER

KAVANAUGH, JOHN T

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/734,114	Applicant(s) GREENE ET AL.	
	Examiner Ted Kavanaugh	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-22 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,7,10,23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4942679 (Brandon et al).

Brandon teaches an article of footwear comprising a foot-supporting member (sockliner 17) having structure as claimed including the lower surface having a second elevation in the heel region that is greater than the first elevation in the forefoot region (see figure 1) and a first thickness in the forefoot region (see thickness of metatarsal pad 56 as shown in figures 1 and 10 and described at col. 6, lines 49-55) greater than the first thickness in the heel region and the sole structure having a polymer foam material (47 and/or 45, see col. 5, lines 35-40) at least partially located under the heel region of the foot-supporting member. Brandon also teaches the depressions in the heel region as claimed, see figure 2. Regarding the medial arch, see figure 4 which shows support for the medial arch.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3728

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5,7,10,23-26 rejected under 35 U.S.C. 103(a) as being unpatentable over GB 483018 (Grouven) in view of Brandon '679.

Grouven teaches an article of footwear comprising a foot-supporting member (9,10) having a lower surface having a second elevation in the heel region that is greater than the first elevation in the forefoot region (see figure 2) and a first thickness in the forefoot region (see thickness of 9,10 shown in figure 5) greater than the first thickness in the heel region (see thickness of 9,10 shown in figure 3) substantially as claimed except for a polymer foam material located under the heel region of the foot-supporting member. Brandon teaches an article of footwear having a polymer foam material (47 and/or 45, see col. 5, lines 35-40) located under the foot-supporting member (17). It would have been obvious to provide the footwear of Grouven with a polymer foam material located below the foot-supporting member, as taught by Brandon, to provide maximum comfort to the wearer (see the last sentence of the abstract of Brandon). Grouven also teaches the depressions in the heel region and under the metatarsal heads as claimed, see figures 1 and 3-5. Regarding the medial arch, see figure 4 of Grouven which shows support for the medial arch.

5. Claims 1,8,10,11,23-26 rejected under 35 U.S.C. 103(a) as being unpatentable over US 2498624 (Skinner) in view of Brandon.

Skinner teaches an article of footwear comprising a foot-supporting member (13) comprising a lower surface having a second elevation in the heel region that is greater than the first elevation in the forefoot region (see figure 1) and a first thickness in the

forefoot region greater than the first thickness in the heel region (see figure 1) substantially as claimed except for a polymer foam material located under the heel region of the foot-supporting member. Brandon teaches an article of footwear having a polymer foam material (47 and/or 45, see col. 5, lines 35-40) located under the foot-supporting member (17). It would have been obvious to provide the footwear of Skinner with a polymer foam material located below the foot-supporting member, as taught by Brandon, to provide maximum comfort to the wearer (see the last sentence of the abstract of Brandon). Regarding claim 8, the cushion layer 18 provides a region of reduced support in the medial forefoot area which is more compressible, due to its resiliency and cushioning characteristics, than the other materials of the foot-engaging surface.

6. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to the claim 1 above, and further in view of US 5896682 (Lin).

Lin teaches an insole with a fluid filled bladder in the heel area and the forefoot area. It would have been obvious to provide the foot-supporting member as taught above with fluid filled bladders, as taught by Lin, to provide better shock absorption.

Terminal Disclaimer

7. The terminal disclaimer filed on 9-22-2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,684,532 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

8. Claims 12-22 are allowed.
9. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 1-8,10,11 and 23-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.


13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

Telephone inquiries regarding other general questions, by persons entitled to the information, “should be directed to the group clerical personnel and not to the examiners” M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Art Unit: 3728

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (703) 308-1244. The examiner can normally be reached from 6AM - 4PM. Starting November 8th, 2004 the examiner's telephone number will change to (571) 272-4556.


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
October 22, 2004